

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

**TALECRIS BIOTHERAPEUTICS, INC., and  
BAYER HEALTHCARE LLC,**

**Plaintiffs,**

**v.**

**BAXTER INTERNATIONAL INC., and  
BAXTER HEALTHCARE CORPORATION,**

**Defendants.**

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**BAXTER HEALTHCARE CORPORATION**

**Counterclaimant,**

**v.**

**TALECRIS BIOTHERAPEUTICS, INC., and  
BAYER HEALTHCARE LLC,**

**Counterclaim Defendants.**

**C.A. No. 05-349-GMS**

**PROPOSED VOIR DIRE**

Good morning, ladies and gentlemen. I am about to ask you a series of questions that we call *voir dire*. The purpose of the *voir dire* examination is:

- a. to enable the Court to determine whether or not any prospective juror should be excused for cause;
- b. to enable counsel for the parties to exercise their individual judgment with respect to peremptory challenges - that is, challenges for which counsel need not give a reason.

If any of you answer “yes” to any of these questions, I would ask you to stand up and, upon being recognized by me, to state your number. At the end of the questions, I will ask those who have responded “yes” to any of the questions to come to sidebar (that is, up to the bench next to me) with counsel for the parties to discuss your answers.

- **Staff introduced.**
- **Panel sworn.**

This case is expected to take 7 days to try. The schedule that I expect to maintain over those 7 days will be as follows:

We will normally begin the day at 9:00 a.m. promptly. We will go until 1:00 p.m. and, after a one hour break for lunch, from 2:00 p.m. to 4:30 p.m. There will be a fifteen minute break at 11:00 a.m. and another fifteen minute break at 3:00 p.m. One exception to this schedule may occur when the case is submitted to those of you who are selected to serve as jurors for your deliberation. On that day, the proceedings might last beyond 4:30 p.m. We will post a copy of this schedule for the jury's convenience in the jury deliberation room.

1. Does the length of this trial or the schedule contemplated by the Court present a special problem to any member of the panel?

### **Description of the Case**

This case is an action for patent infringement arising under the patent laws of the United States. The plaintiffs in this case are Talecris Biotherapeutics, Inc. ("Talecris") and Bayer Healthcare LLC ("Bayer"), or collectively "Talecris". The defendants in this case are Baxter International Inc. and Baxter Healthcare Corporation, or collectively "Baxter".

For those of you selected to serve as jurors, I will give you more detailed instructions regarding the meaning of the word "infringement" once you are sworn-in as jurors and again at the conclusion of the trial. For now, I will simply tell you that Baxter is accused by Talecris of infringing Talecris' patent. Talecris contends that Baxter's activities in connection with Baxter's manufacture and sale of an intravenously injectable immunoglobulin product - known as an IVIG (or IGIV) product - infringe Talecris' patent. Talecris seeks damages for this alleged infringement. Baxter denies that it infringes Talecris' patent and contends that Talecris' patent is invalid [**and unenforceable**]<sup>1</sup>.

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<sup>1</sup>**Talecris objections - 402, 403. Talecris objects to the proposed language for the following reasons: (1) Baxter has no claim for inequitable conduct in this case, as it is the subject of a pending motion for leave to amend, which Talecris has opposed; (2) inequitable conduct is an equitable consideration for the Court, not the jury; (3) if Baxter's motion is granted, Talecris reserves the right to move to bifurcate; and (4) Talecris reserves its right to negotiate the substance of any of Baxter's proposed language pertaining to inequitable conduct, and hereby preserves all of its objections thereto, given that the claim is currently not in the case.**

2. Has any member of the panel heard or read anything about this case?
- **Counsel asked to introduce themselves and their firms.**
3. Does any member of the panel, or your immediate family (spouse, child, parent, or sibling), know any of the attorneys involved in the case, or have you or any of your immediate family had any business dealings with or been employed by any of these attorneys or their respective law firms?
4. Have you or any member of your immediate family ever been employed by Talecris Biotherapeutics, Inc., Bayer Healthcare LLC, Baxter International Inc., or Baxter Healthcare Corporation?
5. Have you or any member of your immediate family ever owned stock in any of these companies?
6. Have you or any member of your immediate family ever had a personal or business relationship of any kind with any of these companies?
7. Are you personally acquainted with any officer, director or employee of Talecris Biotherapeutics, Inc., Bayer Healthcare LLC, Baxter International Inc., or Baxter Healthcare Corporation?
8. Have you or to the best of your knowledge any member of your immediate family had any experiences with any of these companies that might keep you from being a fair and impartial juror?
9. Do you possess any opinions about any of these companies that might keep you from being a fair and impartial juror?
- **Counsel identify all potential witnesses**
10. Does any member of the panel know, or is any member of the panel familiar with, any of the prospective witnesses?
- [11. **Do you believe companies frequently try to infringe or violate the patent rights of other companies?]**<sup>2</sup>

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<sup>2</sup>Baxter objects to this question under 403 because it would predispose the jury to believe that those accused of infringement frequently try to infringe or violate a patentee's rights and could cause the jury to prejudge the case against Baxter, simply because it is the accused infringer, to Baxter's great prejudice. *See Fed. R. Evid. 403.*

12. Have you or any member of your immediate family even been employed by the United States Patent and Trademark Office?
13. Do you hold any opinions about the U.S. Patent and Trademark Office that might keep you from being a fair and impartial juror?
14. Have you ever filed a patent application or been the named inventor on an issued patent in the U.S. or abroad?
15. Do you have any opinions about the relationship between patents and the public interest that might keep you from being a fair and impartial juror?
16. Have you or any member of your immediate family even had an experience with patents or the patent system that has give you a strong and definite feeling that might keep you from being a fair and impartial juror?
17. Are you familiar with, or have knowledge of, intravenously injectable immunoglobulins (IVIG) and/or the manufacturing of immunoglobulin products?
18. Have you or any member of your immediate family even had immune deficiencies that required immunoglobulins or other antibodies?
19. Do you have any reservations about serving on the jury in a case that will involve issues related to the process for preparing an intravenously injectable immunoglobulin products derived from human blood for therapeutic uses?
20. Do you have any reservations about serving on the jury in a case that will involve issues related to the collection of human plasma and the removal or inactivation of viruses from plasma-derived products?
21. Do you have any reservations about serving on the jury in a case that will involve multinational pharmaceutical companies?
- [22. Some of the pharmaceutical products that may be discussed during this trial may have been tested on animals before they were tested on humans. Do you have strong opinions or reservations about such testing?]<sup>3</sup>**

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<sup>3</sup>Talecris objects to Baxter's proposed question as overbroad, irrelevant to any issue in the case, and as a waste of time. *See* Fed. R. Evid. 402 and 403. The issue of testing pharmaceutical products on animals is not present in this case. Because it is a highly divisive issue, there is a substantial likelihood that everyone in the jury venire will answer this question in the affirmative, which will greatly delay jury selection, with practically no benefit to the parties in their efforts in choosing a fair and impartial jury.

23. Have you ever served as a juror in a criminal or civil case or as a member of a grand jury in either a federal or state court?
24. Have you or has anyone in your immediate family ever participated in a lawsuit as a party (such as a plaintiff or defendant) or in any other capacity (such as a witness)?
25. Is there any member of the panel who has any special disability or problem that would make serving as a member of the jury difficult or impossible?
26. Having heard the questions put to you by the Court, does any other reason suggest itself to you as to why you could not sit on this jury and render a fair verdict based on the evidence presented to you and in the context of the Court's instructions to you on the law?

**CERTIFICATE OF SERVICE**

I hereby certify on this 14th day of May, 2007 I electronically filed the foregoing **Proposed Voir Dire** with the Clerk of Court using CM/ECF which will send notification of such filing to the following:

Philip A. Rovner, Esquire Potter Anderson & Corroon LLP Hercules Plaza P. O. Box 951 Wilmington, DE 19899 (302) 984-6140 <a href="mailto:provner@potteranderson.com">provner@potteranderson.com</a>	Susan Spaeth, Esquire Townsend and Townsend and Crew LLP 379 Lytton Avenue Palo Alto, CA 94301-1431 (415) 576-0200 <a href="mailto:smspaeth@townsend.com">smspaeth@townsend.com</a>
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I also hereby certify that a true copy of the foregoing document was served upon the following in the manner indicated on May 14, 2007.

<b><u>Via Hand Delivery and E-Mail</u></b> Philip A. Rovner, Esquire Potter Anderson & Corroon LLP Hercules Plaza P. O. Box 951 Wilmington, DE 19899 (302) 984-6140 <a href="mailto:provner@potteranderson.com">provner@potteranderson.com</a>	<b><u>Via Federal Express and E-Mail</u></b> Susan Spaeth, Esquire Townsend and Townsend and Crew LLP 379 Lytton Avenue Palo Alto, CA 94301-1431 (415) 576-0200 <a href="mailto:smspaeth@townsend.com">smspaeth@townsend.com</a>
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/s/ Jeffrey B. Bove  
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